IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ADMIRALTY AND VICE ADMIRALTY JURISDICTION

ADMIRALTY SUIT NO.15 OF 2001

Jupiter Denizcilik Tasimacilik Mumessillik San. Ve Ticaret Limited Sirketi a Company incorporated under the laws of Turkey and having its office at Kuyubasi Kayisdagi Caddesi Bureu Apt No.122/5, 81030 Kadikoy, Stanbul, Turkey. ...Plaintiff

VS.

1. m.v.LIMA II, a motor vessel flying the flat of Turkey and presently in port and harbour Kandla within the Admiralty and Vice Admiralty jurisdiction of this Honourable Court.

2. Lima Denizcilik Ve Tic.Ltd.Sti) a foreign Company organized under) foreign laws and carrying on business at Altunizade, Erdem Sok. Sabuncuoglu Sit. C Blok No.6, D:9 Uskudar, Istanbul, Turkey.

3. Angsley Investments Limited a company incorporated under the laws of St.Vincent and the Grenadines and carrying on business at 112, Bonadie Street, Kingstown, St.Vincent and the Grenadines. ...Defendants.

Mr.Vishal Sheth i/b. R.A.Fernandes, for plaintiff

Mr.Zal Andhyarujina i/b.Munir Merchant for Defendant no.3.

CORAM: D.K.DESHMUKH,J.

DATED: 8th NOVEMBER,2006

ORAL JUDGMENT

1. The plaintiff is a company incorporated under the Laws of Turkey and carrying on business as supplier of bunkers. The defendant no.1 is a vessel flying a flag of Turkey. She was, at the time when the suit was filed, in the port and harbour Kandala. The second defendant is a foreign company organised under the foreign law and are the owners of first defendant vessel. According to the plaintiff, the defendant no.2 during the period from 9th October,2000 to 13th March,2001 had placed series of orders with the plaintiff for supply of bunkers to defendant no.1 vessel i.e. m.v.LIMA II. According to the plaintiff, in terms of the invoices raised by the plaintiff upon the second defendant in relation to supply of bunkers to the first defendant, payment was to be made within thirty days and in the event of delay in making payment within thirty days, the plaintiff is entitled to charge interest at the rate of 30% per annum. The second defendant committed default in payment of price of the bunkers. Therefore, the plaintiff and the second defendant entered into a protocol in relation to the payment

that was to be made by the second defendant to the plaintiff of the price of the bunkers supplied by the plaintiff to the first defendant vessel. Despite entering into the protocol, according to the plaintiff, the amount of US $100,798 remained in balance. Therefore, the plaintiff filed this suit and sought an order from this Court for arrest of defendant no.1-vessel which was at port Kandla. The order for arrest of first defendant vessel was made by this Court on 17.5.2001. However, the first defendant vessel jumped the arrest and vanished from the port Kandla.

2. Subsequently, the plaintiff came to know that the vessel m.v.LIMA-I which according to the plaintiff was owned by the defendant no.2 was at port Calcutta, and therefore, the plaintiff moved a notice of motion bearing no.1970 of 2001 before this Court. By ad-interim order dated 14.8.2001 the Court restrained the vessel m.v.LIMA-I from leaving the port. The notice of motion no.1970 of 2001 was finally disposed of by order dated 31.10.2001. The Court after hearing the plaintiff and the Counsel appearing for defendant no.2 had confirmed the ad-interim order dated 14.8.2001. It was provided in the order that in case Jain Udyog or anybody else on behalf of the vessel m.v.LIMA-I furnishes security to

the satisfaction of the Prothonotary and Senior Master of this Court, the interim order made by this Court shall cease to operate. The present defendant no.3 M/s.Angsley Investments Ltd. has furnished the security in terms of the orders of this Court referred to above dated 31.10.2001, as a result the vessel m.v.LIMA-I was released. Thereafter, the third defendant had taken out a notice of motion no.529 of 2002 seeking permission of the Court to intervene in the matter. That notice of motion was granted and the plaintiff was directed to join said party as defendant no.3.

3. The defendant nos.1 and 2 have been duly served. They have not filed any written statement. But the newly added defendant no.3 has filed written statement and has disputed the claim made by the plaintiff. On the basis of the written statement filed by defendant no.3, the following issues are framed:-

ISSUES

1. Whether the plaintiffs prove that the 1st defendant vessel is a foreign Flag vessel flying the flag of Turkey and owned by the 2nd Defendants?

2. Whether the plaintiffs prove that various orders for supply of bunkers as contended in the Plaint are placed by the owners of the 1st defendant vessel?

3. Whether the plaintiffs prove that they have made arrangement for supply of various bunker deliveries contractually as stated in the plaint?

4. Whether the plaintiffs prove that they had entered into a Protocol dated 15th February,2001?

5. Whether the plaintiffs prove that the claim for supplies have not been novated by the Protocol dated 15th February,2001 and is it thus maritime claim ?

6. Whether the plaintiffs prove that the supplies made after signing of the protocol is a supply for necessaries/maritime claim as completed under Admiralty Court Act,1861 ?

7. Whether the plaintiffs are sellers of the bunkers and have raised invoices on Defendant no.2 for the supply of bunkers and/or claim monies thereof ?

8. Whether the plaintiffs prove that the suit is tenable against the Defendant no.2 ?

9. Whether the suit is tenable against the Defendants vessel without the plaintiffs having obtained arrest order of the said vessel ?

10. Whether the plaintiffs are entitled to an order and decree in their favour against the Defendants for the sum of US $ 100,798 and whether they are entitled to interest @ 30% p.a. ?

11. Whether the plaintiffs prove that the supplies of bunkers constitute into supply of necessaries and accordingly a Maritime claim/Maritime Lien against the 1st Defendant vessel and thus entitled to an arrest under the Admiralty Courts Act,1861 ?

12. Whether the plaintiffs prove that m.v.LIMA I was the sister ship of the 1st Defendant vessel at the time of the grant of arrest of LIMA I on 31st October,2001 ?

13. Whether the plaintiffs prove that they are entitled to arrest another vessel (Respondent Vessel - m.v. Yim Kim ex Lima-1) in lieu of the 1st Defendant vessel ?

14. Whether the plaintiffs prove that the suit filed by them is within the period of limitation ?

4. The plaintiff has led oral evidence, it has also produced documentary evidence. The defendant no.3 has also examined a witness and has also produced documentary evidence. I have heard the learned Counsel appearing for both the sides in detail. The parties have also filed written submissions.

ISSUE NO.1

5. The plaintiff has claimed in paragraph (2) of the plaint that the first defendant vessel is flying the flag of Turkey and that it is owned by the second defendant. The first and the second defendant have not filed their written statement denying this claim. So far as the written statement of the third defendant is concerned in paragraph (5) of their written statement the defendant no.3 states that they do not admit that the second defendant are the owner of the first defendant vessel. Perusal of paragraph 1(b) of the written statement of the defendant no.3, however shows that according to the defendant no.3 the defendant no.1 vessel m.v.Lima-II and the vessel m.v.Lima-I were sister ships before 10.4.2001. The third defendant states that on 10.4.2001 vessel m.v.Lima-I was transferred by the second defendant to Mercury Shipholding Inc. Therefore, in my opinion, it can be safely said that even defendant no.3 admits that that the first defendant vessel is owned or was at the relevant time owned by the second defendant.

ISSUE NOS.2 to 7, 10 & 11.

6. According to the plaintiff, because of various arrangements entered into between the

plaintiff and the second defendant between October,2000 and March,2001 they supplied bunkers to the first defendant. The plaintiff has produced the documents which show that the orders were placed by the second defendant for supply of bunkers to the first defendant vessel with the plaintiff. The fact that the bunkers were supplied to the first defendant vessel by the plaintiff and on that account payment was due to the plaintiff, has been admitted by the second defendant by signing the protocol. Perusal of the cross-exmination of the witness examined on behalf of the plaintiff shows that the defendant no.3 admitted the documents at Serial nos.23 and 24 of the compilation and they were marked as Exhibit P-1 and Exhibit P-2. The documents at Exhibit P-1 and Exhibit P-2 are the protocol signed by the second defendant acknowledging that the bunkers have been supplied by the plaintiff to the first defendant vessel and payment on that account is due to the plaintiff from the second defendant. In any case the first and the second defendant have not filed any written statement denying these facts. The plaintiff's witness has in categorical terms stated that the bunkers were supplied and payment on that account is still due to the plaintiff from the second defendant. In the cross examination this witness was asked by the defendant no.3 whether the amount

payable under the protocol was paid by the defendant no.2 to the plaintiff. The witness in categorical terms stated that the plaintiff did not receive the payment. In reply to question no.51 the witness examined on behalf of the plaintiff has in detail explained as to how even after the protocol was signed the plaintiff did not receive full payment. The bunkers supplied to the vessel are necessaries and as the payment is due on that account to the plaintiff the suit of the plaintiff for recovery of that amount is maintainable in the admiralty jurisdiction of this court. This suit has been contested only by the third defendant. The third defendant was not at all on the scene when the bunkers were supplied by the plaintiff to the first defendant. In this background therefore, these issues are to be answered in favour of the plaintiff.

ISSUE NOS.8,9 AND 13.

7. According to the defendants, because at the time of the arrest of defendant no.1 vessel by this Court it was at port Kandala, this Court does not have admiralty jurisdiction to entertain the suit. It is further submitted that when this Court made the interim order against the vessel m.v.Lima-I it was at Haldia at Calcutta and therefore, this Court does not

have jurisdiction to entertain the suit. So far as the question whether the admiralty jurisdiction of this Court extends to a vessel which is at a port other than the ports in Maharashtra has been decided by the Division Bench of this court by its judgment in the case of "m.v.Umang - 2002(Supp.2) BCR 864" and this Court has held that the admiralty jurisdiction of this court extends to any vessel which may be at any port in India. It was submitted on behalf of the defendant no.3 that the judgment of the Division bench in the case "m.v.Umang" has been challenged in the Supreme Court and the Supreme Court has granted special leave to appeal and that appeal is presently pending, and therefore, that judgment is not binding on me. In my opinion, however, because the special leave to appeal has been granted by the Supreme Court against the judgment of the Division Bench of this Court in the case of "m.v.Umang", will not deprive of the judgment of the Division bench of its precedential value. Till that judgment is set aside by the Supreme Court, the law laid down by the Division Bench in that judgment continues to be binding on me. Therefore, I have to hold that this Court had jurisdiction to arrest the defendant no.1 vessel though it was at port Kandala which is in the State of Gujrath. So far as the question of arrest of the vessel m.v.Lima-I is concerned, an order of

arrest of vessel m.v.Lima-I was never made. As observed above, after this court arrested the first defendant vessel, it jumped the arrest. By arresting the first defendant vessel this court had assumed the jurisdiction over the subject matter of the suit and therefore, when the vessel m.v.Lima-I entered the territorial water of India as it was the property of the second defendant the order of temporary injunction was made restraining removal of that vessel without the permission of the Court and it is pursuant to that order of temporary injunction that the security has been furnished by the first defendant. This Court did not make an order for arrest of vessel m.v.Lima-I because it was not necessary for this Court to arrest the vessel m.v.Lima-I. An order of temporary injunction was made against the vessel m.v.Lima-I as according to the plaintiff, it was the property of the second defendant. The order restraining removal of vessel m.v.Lima-I was made by this Court to secure the claim of the plaintiff as the Court found that in view of the conduct of the first defendant vessel of jumping the arrest it was necessary to secure the claim of the plaintiff. Issue nos.8,9 and 13 are therefore, answered accordingly.

ISSUE NO.12

8. On 14.8.2001 this court made the ad-interim order restraining removal of the vessel m.v.Lima-I from the admiralty jurisdiction of this Court. It is the case of the third defendant that on that date i.e. on 14.8.2001 the vessel m.v.Lima-I was not a vessel owned by the second defendant. It is common ground that the order of temporary injunction was made against the vessel m.v.Lima-I on the assumption that the vessel is owned by the second defendant. Perusal of the written statement of the third defendant specially paragraph 1(b) of the written statement shows that even according to the third defendant, the vessels m.v.Lima-I and m.v.Lima-II were sister ships at one point of time but they ceased to be sister ship with effect from 10.4.2001. Paragraph 1(b) of the written statement reads as under:-

> 1.(b) that the vessel Lima-I (hereinafter referred to as "Yim Kim ex-Lima-I") is not the sister ship of the vessel Lima II (herein after referred to as the 'defendant vessel') either at the time of filing this admiralty Suit nor at the time of grant to arrest of Lima I on 31st October 2001

in Notice of Motion 1970 of 2001 in this present suit, she ceased to be a sister ship from the date she was sold by the second defendant to Mercury Shipholding Inc. (herein after referred to as 'Mercury') under a bill of Sale dated 10.4.2001. This Defendant submits that at the date of her arrest she was registered at St.Vincent & Grenadines. This defendant submits that the respondent vessel (respondent in Notice of Motion 1970/2001) is presently known as Yim Kim."

Perusal of the above paragraph 1(b) shows that even according to the third defendant till 10.4.2001 the vessel m.v.Lima-I and m.v.Lima-II were sister ships because they were owned by the same persons viz. second defendant. The third defendant also states that when the order was made on 14.8.2001 by this Court the vessel was registered at St.Vincent & Grenadines. According to the third defendant on 10.4.2001 the second defendant sold the vessel to Mercury Shipholding Inc., and that on 1.8.2001 the vessel m.v.Lima-I was further transferred by Mercury Shipholding Inc. and that on 6.8.2001 the vessel was sold to Jain Udyog. For the purpose of this suit we

are not really concerned with any subsequent sale. In view of the written statement of the third defendant, as it is an admitted position that till 10.4.2001 the first defendant vessel and the vessel m.v.Lima-I were sister ships and were owned by the second defendant, the only fact that requires to be established is that on 10.4.2001 the vessel m.v.Lima-I was transferred by the second defendant to Mercury Shipholding Inc. as claimed by the third defendant. It is no doubt that the burden is on the plaintiff to show that on 14.8.2001 when this Court made the order of temporary injunction, the vessel m.v.Lima-I was owned by the second defendant. Because of the admission of the third defendant in paragraph 1(b) quoted above it becomes an admitted position that till 10.4.2001 the vessel m.v.Lima-I was owned by the second defendant. So far as the period from 11.4.2001 till 14.8.2001 is concerned, the plaintiff will have to show that the vessel m.v.Lima-I continued to be owned by the second defendant. To that effect the plaintiff has produced the document dated 12.10.2001 issued by the Turkish authority which clearly establishes that vessel m.v.Lima-I continued to be registered with the Turkish authority and continued to be owned by the second defendant. In paragraph 1(b) of the written statement quoted above the third defendant has stated

that on the date on which this Court granted order of temporary injunction viz. 14.8.2001 the vessel m.v.Lima-I was registered with St.Vincent & Grenadines registry. That claim made is totally belied by letter dated 12.10.2001 of Turkish Authority produced by the plaintiff referred to above. The third defendant has not produced a single document on record which will show that on 10.4.2001 the second defendant transferred the vessel m.v.Lima-I. The third defendant has examined only one witness viz. Shri.Giorgio Denaro. This witness in cross examination was pointedly asked whether he was in any way concerned with the alleged sale of vessel m.v.Lima-I taking place between the second defendant and Mercury Shipholding Inc., and he answered that he was not at all concerned with that sale. The deposition shows that this witness has acted as a broker only in the sale of the vessel between the third defendant and Jain Udyog. Thus, this witness does not have any personal knowledge about the alleged sale of the vessel taking place on 10.4.2001. As observed above, the third defendant has not produced on record the deed executed between the second defendant and Mercury Shipholding Inc. for the alleged sale of the vessel on 10.4.2001. It has also not produced any reliable document from which inference of such a sale could be drawn. Thus,

there is neither any documentary evidence produced by the third defendant nor there is any oral evidence which can be said to be admissible led by the third defendant to establish that on 10.4.2001 the vessel m.v.Lima-I was transferred by defendant no.2 to Mercury Shipholding Inc.. The plaintiff has however, produced a certificate from the Turkish Registry dated 21.9.2001 which shows that the vessel continued to be registered with the Turkish Registry till at least 21.9.2001 and the owners continued to be the second defendant. Thus, the third defendant has not been able to establish either that the vessel m.v.Lima-I was transferred on 20.4.2001 or that it was registered with St.Vincent & Grenadines registry any time before this Court made the ad-interim order on 14.8.2001. Thus, it is clear from the evidence on record that on 14.8.2001 the day on which this Court made the order of interim injunction against the vessel m.v.Lima-I it was owned by the second defendant, and therefore, it was a sister ship of the first defendant vessel.

ISSUE NO.14

9. The plaintiff in the plaint claims that its suit is not barred by the law of limitation. In any case the protocol by which the second defendant

admitted its liability to make payment to the plaintiff is dated 15.2.2001 and this suit has been filed in this Court in the month of May,2001. Obviously, therefore, the suit has been filed within a period of limitation. This issue is therefore, answered accordingly.

10. In the result therefore, the plaintiff succeeds. The suit of the plaintiff is decreed in terms of prayer clause (c) and (i).

11. At this stage a request is made for stay of the execution of the decree. The decree is a money decree and therefore, there is no question of staying the execution of the decree. The request is rejected.